

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF JUNE 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION Nos.5715-18/1998.

BETWEEN :-

1. Dr.Sandhya Venugopal,  
d/o Lt.Col.R.Venugopal.
2. Dr.R.Manjunath,  
s/o Dinesh.
3. Dr.Sanjaya G.R.  
d/o D.Ramachandra Reddy.
4. Dr.Aninda Saha,  
s/o P.N.Saha.

All are adults and students of  
Sri.Jagadguru Jayadeva Medical  
College, Davanagere-4.

...Petitioners.

( By Sri.V.V.Upadhyaya,Adv., )

A N D :

1. The Kuvempu University  
Shimoga, represented by  
the Vice-Chancellor,  
Mallappa Complex,  
B.H.Road,  
SHIMOGA.
2. The Registrar (Examination)  
the Kuvempu University,  
Mallappa Complex,B.H.Road,  
SHIMOGA.

...Respondents.

( By Sri.V.S.Brahmarayappa,Adv.,for R-1 & 2)

This writ petition filed praying to declare that the petitioner had put in requisite attendance qualifying them to be eligible to take the final examination commenced from 15-10-97;etc.

This writ petition coming on for orders this day,  
the Court made the following order:

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The petitioners were admitted to undergo two years Post-Graduate Diploma Courses in the 3rd Respondent - Institution, in December, 1995. Regular admissions for the said course had been completed earlier on 10th February 1995. For the final examination scheduled to be held on 15.10.97, the petitioners were not issued the requisite admission cards on the ground that they had not completed the course and were therefore ineligible for taking the said examinations. Aggrieved by the refusal of the University, the petitioners filed O.S.No.594/94 in the Court of Civil Judge, Junior Division at Davanagere. The suit claimed the following reliefs:-

a)To declare the acts of the defendants in withholding the hall tickets of the plaintiffs as per letter No.KV.16 PDJ. 10789/97-98 dt.09.10.1997 illegal and oppose to the principles of natural justice.

b)To direct the defendants to quash letter No.KV.16 PDJ.10789/97-98 dt.09.10.1997 and allow the plaintiffs to appear for the forthcoming examination which commence from 15th October, 1997 by way of granting mandatory injunction;

c)To restrain the defendants, their officials, staffs, whoever they may be not to obstruct the plaintiffs from

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writing the exams which commence from 15th October, 1997 within college premises of the 2nd defendant by way of granting permanent injunction;

d) And to pass court costs and such other reliefs as the Hon'ble Court deems fit and proper under the circumstances of the case.

An application for interim injunction was also moved by the plaintiffs in which the Court passed an order on 14.10.97 permitting the petitioners to appear in the examinations. Consequently, the petitioners did appear in the examinations commencing on 15.1.97. Few months later, the petitioners moved yet another application before the trial Court seeking a direction against the University for the announcement of their results. An exparte order directing the University to announce the results was issued on that application on 9.2.98. The University however moved for vacation of the said order on the very same day. After hearing the parties, the Court recalled its earlier order inter alia on the ground that a direction for announcement of results of the petitioners would amount to decreeing the suit itself. Such a course, the Court below realised was not permissible especially when the petitioners eligibility to appear in the examinations was

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itself in question. While the suit afore mentioned was pending, the petitioners came up with the present writ petition for a declaration that the they were qualified and eligible to take the final examination and a mandamus directing the respondents to publish the final examination results and to issue the requisite diploma certificates in their favour.

3. In the objections filed on behalf of the respondent-University, it is pointed out that the writ petition was not maintainable as the petitioners had taken recourse to a civil action before the competent Civil Court at Davanagere. It is also pointed out that the petitioners had not undergone the course for the prescribed period of two years and were therefore not eligible to take the examination held on 15.10.97. The fact that certain students in the past had been allowed to appear even before completing their two years course has been described as an error which could not justify a similar error being repeated in the case of the petitioners also.

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4. Counsel appearing for the petitioner argued that they had put in 80% of attendance in the course as per the certificate issued by the Principal of the institution and were therefore eligible to appear in the final examination held on 15.10.97. He submitted that what was important was that the students must have attended 80% of the lectures and not that they must necessarily complete the full length of two years before they can be declared eligible for examination. The fact that the regulation had been previously understood in a similar fashion was according to the learned counsel sufficient to disentitle the University to change its position now.

5. Regulation 3 of the regulations governing post graduate courses in Kuvempu University deals with both degree and diploma courses and reads thus:-


"3.DURATION OF THE COURSE:

i)The duration of the Degree course for those candidates who have been selected after the prescribed period shall be three years.

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ii)The duration of the diploma course for those candidates who have been selected after the prescribed period shall be two years." (emphasis provided)

6. Regulation 4(iv) prescribes that candidates joining after the last date of admission for any reason shall be permitted to take the "First Available" examination after completing the course as mentioned above. The last date for admission of candidates for academic session 95-96 as noticed earlier was 10.10.95. The petitioners therefore clearly fall within the purview of Regulation 4(iv) since they had been admitted two months after the last date who could in terms of the said regulation have been permitted to take the "First Available" examination after they completed the course as prescribed by the Regulation 3(ii) supra. The very fact that the petitioners had according to the certificate issued by the Principal attended 80% of lectures after they had joined the course would not in my opinion have been sufficient compliance with the requirements of the regulations. The scheme of the regulations is that not only should the candidates run through the entire two years course prescribed by the regulations but must satisfy the



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additional requirement of having attended 80% lectures in the same. Satisfaction of one of the two requirements would not suffice. Any other interpretation of the regulations would lead to anomalous results. Take for instance a case where a candidate joins the course 6 months after the last date prescribed for admission. By doing so, he is bound to have missed a substantial part of the lectures delivered during the said period of 6 months. Just because the candidate may on account of being regular in the class for the remaining part of the course secure 80% or more attendance would not mean that he has completed the course in accordance with the regulations which envisages a two years training programme. It is therefore reasonable to hold that in order that a candidate is declared eligible to take the examination it is necessary that he not only attends the course for the complete 2 years but also attends 80% of the lectures delivered therein. That is precisely what regulation 4(iv) means to convey when it stipulates that any candidate joining after the last date fixed for admission shall be permitted to take First Available examination after completing the course. The words "FIRST AVAILABLE EXAMINATION AFTER COMPLETING THE COURSE" appearing in the

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Regulation are significant and clearly indicate that the delayed admission of a candidate to a course for whatever reason does not necessarily entitle him to appear for the final examination with the other candidates who may have been admitted within the last date fixed for such admission. Any such candidate shall have to undergo the course and take the next available examination after he completes the same. The University was therefore in my opinion perfectly justified in taking the view that the petitioners could take the next available examination only, which was scheduled to be held in March 1998. The petitioners however rushed to the Civil Court and secured an interim order in their favour under which they appeared for the examination subject ofcourse to the determination of their eligibility in the suit. The suit was after the filing of the writ petition withdrawn. As a necessary consequence, therefore, anything done or suffered by the parties pursuant to any interim directions issued in the said suit must with the withdrawal of the suit stand obliterated. If the petitioners wished to place reliance upon their appearance in the examination pursuant to the interim orders of the Civil Court, they ought to have done so by

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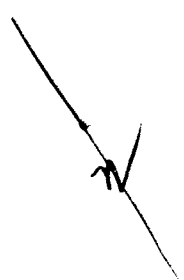


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taking the civil proceedings instituted by them to their logical conclusion. Having withdrawn the suit, they cannot in a separate proceeding like the one instituted here claim a direction for declaration of the result. Such a direction may have been possible only from the civil court as a logical step after the petitioners were found eligible to take the examination. In the circumstances, the question of declaring the results of the examinations already taken by the petitioners does not in my opinion arise. The said examination shall on account of withdrawal of the suit be deemed to have been cancelled.

7. Counsel appearing for the petitioners at this stage urged that the University be atleast directed to admit the petitioners to the next ensuing examination which is scheduled to be held in October 1998. Mr. Brahmarayappa did not have any serious objection to this course being adopted though he submitted that the College may have to arrange lectures for the period during which the petitioners could not on account of their late admission attend the classes. Subject to the petitioners fulfilling that requirement, the University would have no difficulty in admitting



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the petitioners to the next ensuing examinations. The submissions made by Mr. Brahmarayappa are recorded and liberty reserved to the petitioners to approach the institution concerned for taking appropriate steps for arranging lectures for the period the petitioners could not attend the classes. Needless to say that upon completion of the course the respondent-University shall permit the petitioners to take the ensuing examination without any let or hindrance, but subject to the completion of the prescribed formalities. The writ petitions are accordingly disposed of leaving the parties to bear their own costs.

jm/-  
Jan/-

Sd/-  
JUDGE

